

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 405-A: HOSPITAL AND HEALTH CARE PROVIDER
COOPERATION ACT HEADING: PL 2005, c. 670, §1 (new)

§1845. CONTINUING SUPERVISION

Continuing supervision of holders of certificates of public advantage under this chapter may consist of periodic reports, supervisory reviews and additional supervisory activities. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF).]

1. Periodic report and supervisory review. With regard to a certificate of public advantage approved under this chapter, the certificate holder shall report periodically to the department on the extent of the benefits realized and compliance with other terms and conditions of the certificate. The certificate holder shall submit copies of the report to the Attorney General at the time the report is filed with the department. The Attorney General may submit to the department comments on the report filed under this subsection. The department shall consider any comments on the report from the Attorney General in the course of its evaluation of the certificate holder's report. Within 60 days of receipt of the certificate holder's report, the department shall make findings regarding the report, including responses to any comments from the Attorney General, determine whether to institute additional supervisory activities under this section and notify the certificate holder.

[2011, c. 90, Pt. J, §16 (AMD) .]

2. Additional supervisory activities. The provisions of this subsection apply to additional supervisory activities determined necessary under subsection 1.

A. The department shall conduct additional supervisory activities whenever requested by the Attorney General or whenever the department, in its discretion, determines those activities appropriate, and:

- (1) For certificates of public advantage not involving mergers, at least once in the first 18 months after the transaction described in the cooperative agreement has closed; and
- (2) For certificates of public advantage involving mergers, at least once between 12 and 30 months after the transaction described in the cooperative agreement has closed. [2011, c. 90, Pt. J, §17 (AMD) .]

B. In its discretion, the department may conduct additional supervisory activities by:

- (1) Soliciting and reviewing written submissions from the certificate holders, the Attorney General or the public;
- (2) Conducting a hearing in accordance with Title 5, chapter 375, subchapter 4 and the department's administrative hearings rules; or
- (3) Using any alternative procedures appropriate under the circumstances. [2011, c. 90, Pt. J, §17 (AMD) .]

C. The department shall notify the certificate holders if it intends to consider the imposition of any additional conditions or measures authorized under subsection 3. If the department notifies certificate holders under this paragraph, the certificate holders may request and are entitled to a hearing in accordance with Title 5, chapter 375, subchapter 4. [2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

D. A decision of the department regarding additional supervisory activities is governed by the standards set forth in subsection 3. The burden of proof is on the parties seeking any remedial order. A remedial order may not issue unless the basis for it is established by a preponderance of the evidence. [2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

[2011 , c. 90 , Pt. J , §17 (AMD) .]

3. Standards governing additional supervisory activities. The provisions of this subsection govern the standards of any additional supervisory activities conducted under subsection 2.

A. If the department determines in any additional supervisory activities conducted under subsection 2 that the certificate holders are not in substantial compliance with any conditions included in the certificate under section 1844, subsection 5 or in a consent decree entered into by the department, the department may at its discretion:

- (1) Impose additional conditions to secure compliance with any conditions included in the certificate or consent decree; or
- (2) Issue notice to the certificate holders compelling compliance with any conditions included in the certificate or consent decree. If after 30 days the department determines that the notice was not effective in securing compliance with the conditions, the department may impose any additional measures authorized by law to compel compliance with the conditions, or seek a court order revoking the certificate in accordance with subsection 4. [2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

B. The department may impose additional conditions to ameliorate any disadvantages attributable to any reduction in competition, or seek a court order revoking the certificate in accordance with subsection 4, if the department determines in any additional supervisory activities conducted under subsection 2 that, as a result of changed or unanticipated circumstances, the benefits resulting from the activities authorized under the certificate and the unavoidable costs of revoking the certificate are outweighed by disadvantages attributable to a reduction in competition resulting from the activities authorized under the certificate. For purposes of this paragraph, "unanticipated circumstances" includes the failure to realize anticipated benefits of the agreement or the realization of unanticipated anticompetitive effects from the agreement. [2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

[2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

4. Action to revoke certificate. The department is authorized to seek a court order revoking a certificate of public advantage under the circumstances specified in subsection 3, paragraph A, subparagraph (2) or subsection 3, paragraph B. In any such action the standards for adjudication to be applied by the court are the same as in section 1848, subsections 5 and 6. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Maine courts concerning unreasonable restraint of trade under 15 United States Code, Sections 1 and 2 and Title 10, sections 1101 and 1102. The department's burden of proof is the same as that for the Attorney General in an action under section 1848, subsections 5 and 6.

[2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

5. Attorney General enforcement. The Attorney General may file an action in Superior Court to enforce any final action taken by the department as a result of additional supervisory proceedings under this section. In the event that the Attorney General files an action pursuant to its separate authority outlined in section 1848, any pending department proceedings are stayed pursuant to section 1848, subsection 7.

[2005 , c. 670 , §1 (NEW); 2005 , c. 670 , §4 (AFF) .]

6. Fees and costs. If the department prevails in an action under this section, the department and the Attorney General are entitled to an award of the reasonable costs of deposition transcripts incurred in the course of the action and reasonable attorney's fees, expert witness fees and court costs incurred in the action.

[2005, c. 670, §1 (NEW); 2005, c. 670, §4 (AFF) .]

SECTION HISTORY

2005, c. 670, §1 (NEW). 2005, c. 670, §4 (AFF). 2011, c. 90, Pt. J, §§16, 17 (AMD).

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